



The State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

January 9, 2008

The Honorable Judith Spang, Chairman  
House Resources, Recreation, and Development Committee  
Legislative Office Building, Room 305  
Concord, New Hampshire 03301

**Re: HB 1439, relative to a moratorium on large groundwater withdrawals intended for commercial bottling use.**

Dear Chairman Spang:

Thank you for the opportunity to comment on HB 1439, which would place a five-year moratorium on large groundwater withdrawals intended for commercial bottling use and the drilling of wells for this purpose. The Department of Environmental Services (Department) does not support this bill for the reasons discussed below.

In the purpose statement contained in Paragraph 1, HB 1439 states that, under three international trade agreements, any water that is exported to countries operating under these agreements becomes an international commodity which is "*beyond the control of the public utilities commission and the department of environmental services*". This statement is inaccurate based on the information available to us, which includes an informal legal opinion from the Department of Justice (copy attached) and testimony by Attorney Bill Warren of Georgetown University and the Forum for Democracy on October 22, 2007 at a meeting of Citizen's Trade Policy Commission. Based on these sources, we understand that, as long as a comprehensive regulatory program exists that is consistently applied, the Department is able to regulate permitted groundwater withdrawals in the same manner, whether the water is exported for sale or sold domestically, to reasonably protect environmental resources and other water users. As noted below, New Hampshire has such a regulatory program. Furthermore, the authority of this program has never been legally challenged based on the grounds that it conflicts with international trade agreements so, in practice, this is a hypothetical concern.

In 1998, the Groundwater Protection Act, RSA 485-C, was amended to require that new large groundwater withdrawals (withdrawals exceeding 57,600 gallons over any 24-hour period) obtain a permit from DES. These permits ensure that no unmitigated impacts occur to surrounding water resources and users. Since 1998, the law has been strengthened by three significant amendments. Furthermore, this permitting program continues to be reviewed by the Groundwater Commission, established by the legislature for this purpose. This commission has also made recommendations that have been implemented by both the Department and the Legislature to improve the program. The result is that New Hampshire's regulatory structure for large groundwater withdrawal permitting has evolved to become among the most comprehensive in the country.

During the 2007 legislative session, the Legislature enacted SB162, creating the Citizen's Trade Policy Commission. The purpose of this commission is to evaluate the potential negative impacts of

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free trade agreements on New Hampshire, including possible effects on the regulation of water resources. The Citizen's Trade Policy Commission has met twice and made some progress, but still needs time to gather and assess more information. For example, the Commission still needs to hear from several other experts with various perspectives and knowledge on this subject and to make findings based on the information presented.

In conclusion, the Department believes that, based on the available information, there is no clear technical or regulatory basis for the proposed moratorium on large groundwater withdrawals for commercial bottling proposed by HB 1439. We recommend that you allow the work of the Groundwater Commission and Citizen's Trade Policy Commission to continue to completion prior to further consideration of this bill.

Thank you again for this opportunity to comment on this bill. Please feel free to call me at 271-3503, or Sarah Pillsbury at 271-1168, if you have any questions or need additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas S. Burack". There is a red circular stamp with the word "COPY" inside, partially overlapping the signature.

Thomas S. Burack  
Commissioner

cc: Representatives Buco  
Representative Cunningham  
Representative Bridgham  
Representative Heard